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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/489,241	01/21/2000	Shiuh John Luo	5852-07-LAV	5600

29668 7590 10/18/2002

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EXAMINER

CORBIN, ARTHUR L

ART UNIT	PAPER NUMBER
1761	13

DATE MAILED: 10/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

TC-13

Office Action Summary	Application No. 09(489,141)	Applicant(s) Luo ET AL
	Examiner ARTHUR L. CORBIN	Group Art Unit 1761

--The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address--

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

☒ Responsive to communication(s) filed on 9-23-02

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

☒ Claim(s) 1-3, 7-9 is/are pending in the application.

Of the above claim(s) 4-6, 10-12 is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 1-3, 7-9 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claim(s) _____ are subject to restriction or election requirement

Application Papers

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119 (a)-(d).

☐ All ☐ Some* ☐ None of the:

☐ Certified copies of the priority documents have been received.

☐ Certified copies of the priority documents have been received in Application No. _____

☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a))

*Certified copies not received: _____

Attachment(s)

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Reference(s) Cited, PTO-892

☐ Notice of Informal Patent Application, PTO-152

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Other _____

Office Action Summary

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1. Claims 4-6 and 10-12 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 6.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-3 and 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reynolds (WO 98/40406) in view of Muhler (3,590,120).

Applicant is referred to the reasoning set forth in paragraph no. 2, paper No. 10.

4. Applicant's arguments filed September 23, 2002 have been fully considered but they are not persuasive. The alleged diminishing of the efficacy of both CPP-ACP complex and sodium bicarbonate as a result of combining the two components, as discussed by applicant on page 3 of the remarks, is based upon using the two components together in a high moisture environment for an extended time periods. Applicant is referred to Example 1 in the spec. to support ^{this} ~~the~~ determination. However, the obviousness rejection set forth above is dependent upon the skilled artisan combining the two components in a chewing gum, which is typically low in moisture content, rather than including these components in higher moisture content environments, e.g. oral ^{riases} ~~and~~ pastes as mentioned by applicant on page 3 of the remarks.

Further, according to Example 1 in applicant's spec., the CPP-ACP complex has a very small probability of losing efficacy in the presence of sodium bicarbonate when an individual

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chews the gum for the short period of time needed to release the two components into the individual's oral cavity, i.e. about 10 minutes.

Since both applied references are concerned with providing dental benefits to an individual who chews a chewing gum, the two references are analogous and properly combinable to obtain additive results of each component. Since these results can be achieved in a short time period after chewing begins, the two components will not interact in a negative manner before the desired results are achieved.

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

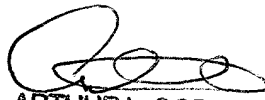
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Corbin whose telephone number is 703 308-3850. The examiner can normally be reached on Tuesday-Friday from 10 AM to 7:30 PM and on alternate Mondays.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703 308-3929. The fax phone numbers for the organization where this application or proceeding is assigned are 703 872-9310 for regular communications and 703 872-9310 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-0661.

Examiner Corbin/ng
October 17, 2002


ARTHUR L. CORBIN
PRIMARY EXAMINER
10-17-02